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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Part 1 of the) WT Docket No. 97-82
Commission's Rules --)
Competitive Bidding Proceeding)

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless, Inc. ("AT&T"), by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

AT&T generally supports the Commission's decision to simplify its regulations regarding competitive bidding and consolidate these provisions in Part I of the Commission's rules.

I. Applicability of General Competitive Bidding Rules

AT&T agrees with the Commission that much of the auction process can be standardized and that establishing service-specific rules for most aspects of the competitive bidding process is unnecessary.^{2/} AT&T therefore supports the Commission's proposal to consolidate the competitive bidding procedures that have been adopted in specific services into Part I of the Commission's rules and apply these general competitive bidding rules to future auctions. The Commission should retain adequate flexibility in Part I, however, to adopt service-specific requirements where necessary.

^{1/} In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, (rel. Feb. 28, 1997) ("Notice").

^{2/} Id. at ¶ 18.

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II. Application Issues

A. Electronic Filing of Applications

AT&T's experience with the electronic filing of applications has generally been very positive. AT&T therefore supports the Commission's proposal to require all short-form and long-form applications to be filed electronically beginning January 1, 1998,^{3/} so long as procedures are incorporated to address technical problems that may arise with electronic filing. Specifically, the Commission should institute a waiver process for those rare occasions when a technical problem prevents an application from being filed electronically. In such case, the applicant must have a means to obtain a waiver quickly and be permitted to submit a paper original of the application by hand or by mail the same day. In this regard, AT&T recommends that a specific FCC employee (as opposed to a contractor) be designated for each auction to serve as the contact point for applicants with questions about electronic filing or requests for waivers. This person should be a member of the Commission staff with authority to permit the applicant to file the application manually.

B. Short Form Application Amendments

AT&T agrees with the Commission's proposal to amend its general auction rules to define major amendments to FCC Form 175 uniformly for all auctionable services.^{4/} "Major" amendments should include any change in ownership that constitutes a change in control as well as any change in size that would affect an applicant's eligibility for small business provisions. As for changes to the licenses selected in simultaneous multiple round

^{3/} Id. at ¶ 46.

^{4/} Id. at ¶ 48.

auctions, AT&T is not convinced that allowing applicants to add or delete selections, at least until the deadline for submitting upfront payments has arrived, would impact negatively the competitiveness of the auction.^{5/} The major problem with the system as it now exists is that two parties may inadvertently select overlapping markets and thereby be precluded from discussing matters, such as interconnection, resale, or equipment orders, that could impact, however tangentially, their bidding strategies. If the Commission corrects this situation by, as discussed below, instituting a "safe harbor" to the anti-collusion rules, permitting deletion of markets becomes less important.

III. Payment Issues

A. Refund of Upfront Payments

AT&T emphatically urges the Commission to continue its current practice of returning the upfront payments of bidders who have completely withdrawn from an auction prior to the conclusion of competitive bidding.^{6/} This practice is entirely consistent with the Telecommunications Act of 1996 ("1996 Act"), which requires that interest accrued on deposits be transferred to the Telecommunications Development Fund ("TDF").^{7/} There is nothing in the language of the 1996 Act that requires the Commission to increase -- through retention of deposits -- the interest-generated funds to be transferred to the TDF. Such a

^{5/} See id. at ¶ 48. AT&T agrees, however, that it would be unfair to allow addition of a market if it had been designated originally by only one applicant. In such case, the first application should be considered not mutually exclusive and the license should be awarded to that party without being subjected to competitive bidding.

^{6/} Id. at ¶ 57.

^{7/} 47 U.S.C. § 309(j)(8)(C).

practice would impose an unnecessary hardship on bidders and might deter participation in the auction.

B. Late Fees

In past auctions, the Commission has been required to address on a case-by-case basis situations involving missed deadlines for second down payments by winning bidders. AT&T agrees that the Commission should formalize what has become an informal waiver process. Establishing standard procedures for dealing with late payments, including the amount of any penalties, would lessen the administrative burden on the agency and give clear notice to applicants about their obligations.

C. Second Down Payments

In no circumstance should a bidder be required to make a second down payment (if it is a designated entity) or a payment in full (if it is not a designated entity) if a petition to deny has been filed against it.^{8/} In past auctions, the Commission has appropriately tied payment to grant of the license. To do otherwise would impose an unacceptable burden on the winning bidder. In some cases, financing may be contingent on award of a license and in other cases, the licenses may never be granted or may only be granted after protracted litigation. Placing such an encumbrance on the finances of winning bidders while the Commission resolves the issues raised in the petition would be highly prejudicial vis a vis licensees in the market who are free to construct their systems, market their services, and begin recouping their investments.

^{8/} Notice at ¶ 65.

IV. Competitive Bidding Design, Procedure, and Timing Issues

A. "Real Time" Bidding

While the Commission's proposal to allow bidding on a continuous basis within a combined bid submission/bid withdrawal period might speed up the auction process,^{9/} AT&T strongly suggests that the procedure be field tested before the Commission amends its rules to require "real time" bidding as the preferred bidding method for electronic multiple round auctions. Requiring bidders to track multiple licenses on a continuous basis may cause undue confusion and could ultimately increase the delays inherent in the current auction design. Because the auction process works quite well now, the Commission should not make wholesale changes absent clear evidence that another design would result in significant improvements.

B. Misuse of Bid Withdrawals

While in past auctions there has appeared to be some misuse of the ability to withdraw bids, this right is critical to a bidder's auction strategy. Accordingly, AT&T opposes the imposition of limits on withdrawals or any other standardized mechanism aimed at addressing this problem. While in some cases, excessive withdrawals might be evidence of abusive behavior, in other cases it simply demonstrates a change in bidding strategy. Short of exploring the intent behind each withdrawal, it is difficult to distinguish between these situations. While there is no perfect remedy, AT&T suggests that the Commission continue to monitor each auction closely and address abusive conduct if it can be identified as such.

^{9/} Id. at ¶ 81.

C. Reauction Versus Reoffering to Second Highest Bidder

In the vast majority of situations, the benefits of reauctioning defaulted licenses far outweigh the advantages of offering them to the second highest bidder. As the Commission recognizes, having developed a computerized auction system and conducted numerous auctions, "the costs of a re-auction, even for a small number of relatively low value licenses, would be minimal."^{10/} Furthermore, the principal reason for conducting an initial auction - ensuring that the license ends up in the hands of the party that values it the most -- applies equally for reauctions. There is no guarantee that the next highest bidder would place the same value on the license as the party that is willing to outbid all others at the subsequent auction. Finally, if the Commission announces that the second highest bidder would be eligible for the license at its bid price, the agency would likely see an enormous increase in the number of petitions to deny filed against winning bidders. Such a result would wholly undermine the congressional objective of promoting "the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays."^{11/}

D. Rules Prohibiting Collusion

While AT&T understands the Commission's concerns about protecting the competitiveness of the bidding process, there is no reason that existing antitrust laws and policies would not adequately accomplish this goal.^{12/} The Commission's anti-collusion

^{10/} Id. at ¶ 96.

^{11/} 47 U.S.C. § 309(j)(3)(A).

^{12/} See Notice at ¶¶ 98-102.

rules generally cause unnecessary confusion and preclude legitimate discussions among bidders.

If the Commission decides to retain its anti-collusion rules, however, AT&T agrees that some revisions are necessary. First, the Commission should grant a "safe harbor" for discussions between incumbent carriers and other bidders involving business matters including, but not limited to, acquisitions, interconnection, resale, equipment orders, and site negotiations. While resolution of these issues among parties could theoretically impact an applicant's bidding strategy, they do not involve the sort of bid rigging and other anticompetitive behavior about which the Commission should be concerned. Carriers need to continue with their day-to-day business operations and requiring parties to cease transactional discussions until the conclusion of an auction can impose an extreme financial hardship. The Commission should expressly determine that the benefits of permitting such discussions far outweigh fears that the auction process will be undermined.

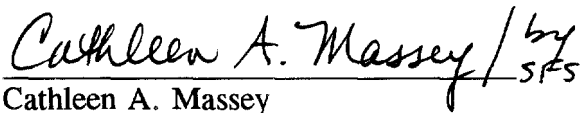
In addition, the Commission should modify its anti-collusion rule to permit the holder of a non-attributable interest in an applicant that withdraws from the auction to obtain an ownership interest in another applicant that has applied for the same markets. If the Commission decides to require a certification from the interest holder that it had not communicated with the new applicant, it should limit such certification to matters involving bids or bidding strategies. In particular, the interest holder should not have to certify that it has not had discussions about the business-type matters discussed above.

CONCLUSION

As set forth above, AT&T generally supports the Commission's proposals to streamline and consolidate its competitive bidding regulations. AT&T strongly objects, however, to any requirement that a bidder make a second down payment or a payment in full if a petition to deny has been filed against it.

Respectfully submitted,

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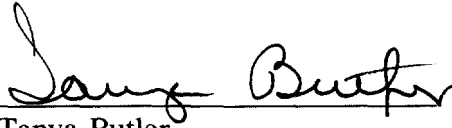
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March 27, 1997

CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 27th day of March, 1997, a copy of the foregoing "Comments of AT&T Wireless Services, Inc.", was sent by first-class mail, postage prepaid, or delivered by messenger (*) to the following:


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